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IN THE

Supreme Court of the United States

OCTOBER TERM, 1928.

No. 579.

INTERNATIONAL SHOE COMPANY, APPELLANT,

vs.

STRATTON SHARTEL, ATTORNEY-GENERAL OF THE STATE OF MISSOURI, AND C. EUGENE STEPHENS, STATE TREASURER OF THE STATE OF MISSOURI, RESPONDENTS.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI.

BRIEF AND ARGUMENT OF RESPONDENTS.

STATEMENT.

This is an appeal from the District Court of the United States, Western District of Missouri. Complainant, the International Shoe Company, filed an application before the district court asking for an injunction against Stratton Shartel, Attorney-General of the State of Missouri, and C. E. Stephens, State Treasurer of the State of Missouri, to enjoin said officers from collecting the annual franchise tax assessed by the State of Missouri against complainant corporation.

For their grounds of relief complainant corporation set out that the no par value stock law of Missouri (R. 31) was unconstitutional and that the assessment of the tax under this statute was an interference with interstate commerce

and did not give complainant corporation due process of law.

Defendants filed an answer to the bill of complaint (R. 42), and the case came on for argument before the District Court of the Western District of Missouri, being heard by Judge Stone of the United States Circuit Court of Appeals of the Eighth Circuit, and Judge Reeves and Otis of the District Court of the Western District of Missouri.

On November 2, 1928, an opinion was rendered by the court, written by Judge Reeves and concurred in by Judges Stone and Otis, denying the writ of injunction prayed for, International Shoe Company vs. Shartel, 29 Fed (2nd) 604. The case was then appealed to this court.

SUMMARY OF ARGUMENT

I

THE FRANCHISE TAX ACT OF MISSOURI IS CONSTITUTIONAL

A

The regular franchise tax act of Missouri under which all franchise taxes are collected has been held by this court and the Missouri Supreme Court to be constitutional. All franchise taxes are assessed under this section. (R. 2324).

St. Louis-San Francisco Railway Company vs. Middelkamp, 256 U. S. 226, l. c. 231.

State ex rel. Marquette Hotel Investment Company vs. State Tax Commission, 282 Mo. 213.

State ex rel. Missouri Pacific Railway Company vs. Danuser, 6 S. W. (2nd) 907.

B

The Missouri franchise tax does not lay a tax against any stock other than that which is OUTSTANDING. No attempt has ever been made to tax stock which was merely authorized.

II

THE MISSOURI NO PAR STOCK LAW IS CONSTITUTIONAL AND THE TITLE IS GOOD

A

Section 28, Article 4, of the Constitution of Missouri provides as follows:

> "Section 28. BILLS MUST CONTAIN BUT ONE SUBJECT — EXCEPTIONS — TITLE.—No bill (except general appropriation bills, which may

embrace the various subjects and accounts for and on account of which moneys are appropriated, and except bills passed under the third subdivision of Section forty-four of this article) shall contain more than one subject, which shall be clearly expressed in its title."

B

The title of an act passed by the Missouri Legislature must serve as a clear and comprehensive indicator of the purpose of the act, and is sufficient if the title does not mislead as to the chief topic of the act, when it sufficiently indicates the substantial purposes of the act it will not be violative of the constitution, and it is only necessary that the title indicate the subject of it in a general way without entering into detail.

State ex rel. Dickason vs. County Court, 128 Mo. l. c. 441.

State vs. Sloan, 258 Mo. l. c. 313.

State ex rel. vs. Roach, 258 Mo. l. c. 559.

Coca-Cola Bottling Company vs. Mosby, 289 Mo. l. c. 472.

State ex inf. Barrett vs. Imhoff, 291 Mo. l. c. 619.

State vs. Mullinix, 301 Mo. l. c. 396.

State ex rel. Missouri Pacific vs. Danuser, supra.

C.

This particular act in question and the title thereto has been held constitutional by a Federal Court composed of three judges.

International Shoe Company vs. Shartel, 29 Fed. (2nd) 694.

D

The Missouri Supreme Court has held that this act applies in arriving at the value of no par stock for the purpose of assessing the franchise tax.

State vs. Pierce Petroleum Corporation, 2 S. W. (2nd), 790.

III

THE METHOD OF COMPUTING THE FRANCHISE TAX IN MISSOURI DOES NOT DENY EQUAL PROTECTION OF THE LAW

A

The franchise tax act in Missouri does not become a property tax simply because it is assessed on capital stock and surplus. A state may use any method it desires as a means of arriving at the basis for assessing a franchise tax, and if the exaction in question does not tax property and does not attempt to regulate interstate commerce it is not unconstitutional merely because of the mode of its measurement.

St. Louis-San Francisco Railway Company vs. Middelkamp, 256 U. S. l. c. 231-232.

Maine vs. The Grand Trunk Railway Company, 142 U. S. l. c. 228-229.

Home Insurance Company of New York vs. People, 134 U. S. l. c. 599-600.

Flint vs. Stone Tracy Company, 220 U. S. 107, l. c. 167.

Baltic Mining Company vs. Commonwealth of Mass., 231 U. S. 68, l. c. 82-83.

Kentucky Union Company vs. Kentucky, 219 U. S. 140, l. c. 151.

The Missouri franchise tax law applies equally to both domestic and foreign corporations having stock of no par value, and is based on the proportionate part of its outstanding capital stock and surplus, that its property and assets in Missouri bear to all its property and assets wherever located.

IV

THE MISSOURI NO PAR LAW DOES NOT INTERFERE WITH INTERSTATE COMMERCE

A

A tax is not a regulation of interstate commerce merely because it is assessed upon and paid by a corporation which is engaged in interstate commerce.

Postal Telegraph Cable Company vs. Adams, 155 U. S. 688, l. c. 700.

Hump Hairpin Company vs. Emmerson, 258 U. S. 290, l. c. 294-295.

Baltic Mining Company vs. Mass., 231 U. S. 68, l. c. 82-83.

St. Louis Southwestern Railway Company vs. Arkansas, 235 U. S. 350, l. c. 365.

Kansas City M. & B. R. Company vs. Stiles, 242 U. S. 111, l. c. 117-118.

B

That a state may place a fixed value upon no par stock in a corporation for purposes of arriving at a state franchise tax has been decided by this court, and it is not an interference with interstate commerce.

Roberts & Schaefer Company vs. Louis L. Emmerson, 271 U. S. 50, l. c. 57.

State ex rel. Attorney-General vs. Margay Oil Company, 169 Arkansas 96, 272 S. W. 845.—269 S. W. 63.

Affirmed by this court: 273 U. S. 666.

ARGUMENT

I

THE FRANCHISE TAX ACT OF MISSOURI IS CONSTITUTIONAL

The franchise tax act of Missouri was passed in 1917. It was amended in 1921 and that act is in force today in Missouri as amended. The constitutionality of this act as originally passed was tested in the Missouri Supreme Court in the case of State ex rel. Marquette Hotel Investment Company vs. State Tax Commission, 218 Mo. 213. It was later carried to the Supreme Court of the United States and in the case of St. Louis-San Francisco Railway Company vs. Middelkamp, 256 U. S. 226, the act was held to be constitutional.

In 1928 this act as amended was again tested and held to be constitutional by the Supreme Court of Missouri, State ex rel Missouri Pacific Railway Company vs. Danuser, 6 S. W. (2nd) 907. A Writ of Certiorari to the Supreme Court of the United States was applied for but was denied on October 22, 1928. The above mentioned decisions unquestionably take away any question as to the constitutionality of the franchise tax act proper.

II

THE MISSOURI NO PAR STOCK LAW IS CONSTITUTIONAL AND THE TITLE IS GOOD

At the time the no par stock act was tested before the Supreme Court of Missouri in the case of State vs. Pierce Petroleum Corporation, 2 S. W. (2nd) 790, no mention was made as to the title of the act. This was an afterthought on the part of the various corporations, when the Missouri Supreme Court held the act to be constitutional.

The complainant corporation did, however, after the decision in the Pierce case, file an application for a Writ of Certiorari before the Supreme Court of Missouri setting out therein that the title to the act was bad. This application was denied.

When the opinion in the case of State vs. Pierce Petroleum Corporation was handed down by the Supreme Court of Missouri, Judge Ragland speaking for the court, 2 S. W. (2nd) 793, had this to say relative to Section 12 of said act, which is the particular section now under dispute:

> "Deleting the portion of the provision which for the purpose in hand has no relevancy, and transposing some of its language, we have:
>
> " 'Each share of stock without any nominal or par value, under the provisions of this act (that is, a share of stock without nominal or par value within the meaning and purview of the act) shall be considered the equivalent of a share having a nominal or par value of one hundred dollars—for the purpose of computing any organization taxes required to be paid under the laws of this state, and such tax or taxes, if any, the determination of which is based on the par value of shares of stock, and not on the number of shares or the actual or ascertained value thereof.'
>
> "There is no dispute as to what is meant by 'organization taxes required to be paid under the laws of this state.' Respondent concedes that the language refers to the fee, graduated according to the amount of capital stock, required of a domestic corporation at the time of filing its articles of association, as provided by section 9735, R. S. 1919, and the fee required of a foreign corporation, on its application to be licensed to do business in this state, based on the proportion of its capital stock represented by its property and business in the state,

as provided by section 9792, R. S. 1919. In construing 'such tax or taxes, if any, the determination of which is based on the par value of shares of stock and not on the number of shares or the actual or ascertained value thereof,' it is insisted that under the rule of ejusdum generis this language must be construed as meaning taxes of the same kind as 'organization taxes.' But, even so, the statute itself defines the class. And this is the class:

" 'Such tax or taxes, if any, the determination of which is based on the par value of shares of stock and not on the number of shares or the actual or ascertained value thereof.'

" 'Organization taxes' fall within that class. In addition to those taxes there was at the time of the passage of the act in 1921, and there is now so far as we are advised, but one other corporation tax (not mere fee) falling within the class, namely, the annual franchise tax imposed by Section 9836, R. S. 1919. According to that section:

" 'Every corporation organized under the laws of this state shall * * * pay an annual franchise tax * * * equal to one-tenth of one per cent, of the par value of its outstanding capital stock and surplus.* * * Every corporation not organized under the laws of this state, and engaged in business in this state, shall pay an annual franchise tax * * * equal to one-tenth of one per cent of the par value of its capital stock and surplus employed in business in this state.'

"This section as amended in 1921 (Laws Ex. Sess. 1921, p. 122, sec. 1) as to rate and in certain minor particulars is still in force. It thus conclusively appears that the annual franchise tax is of the same kind as 'organization taxes.' Both are franchise taxes and both are assessed on the basis of 'the par value of shares of stock and not on the

> number of shares or the actual or ascertained value thereof.' We think there can be no doubt therefore but that the Legislature in employing the language under construction had in mind the annual franchise tax imposed upon corporations under said Section 9826."

When the present case was argued in Kansas City before a three judge Federal Court the title was taken up, and argued before three judges, all of whom were from Missouri and acquainted with the Missouri laws, and the requirements of titles to acts. Judge Reeves, who wrote the opinion in this case, and held that the title was good, was formerly a Commissioner of the Supreme Court of Missouri.

The Missouri courts have always held that under our constitutional provision it is not necessary to go into detail in writing the title for an act so long as the title is clear. In speaking of a title to an act under our constitution, the Missouri Supreme Court in State vs. Mullinix, 301 Mo. l. c. 390, has this to say of a title:

> "The generality of a title will not affect its validity where it does not tend to cover up or obscure legislation which is in itself incongruous * * * * * The disposition of the courts has always been to avoid thwarting the efficiency or evident salutary effect of legislative action by a liberal interpretation of the constitutional provision."

In speaking of the title of an act, Judge Barclay, speaking for the court, in State ex rel. Dickason et al. vs. County Court of Marion County et al., 128 Mo. l. c. 441, said:

> "The constitutional mandate in regard to the title of a statute does not require a table of contents as a caption to a law. It is sufficient if the title does not mislead as to the chief topic of the act,

and that the minor features of it have a reasonable and natural connection with the subject named in the title * * * * * *.

"Mere generality in the title will not vitiate an act of the general assembly, unless the title is of such a nature as to compel the conviction that it was designed to mislead as to the subject dealt with."

And in State vs. Whitaker, 160 Mo. l. c. 69, 70, heard before the Supreme Court, it was said:

"Sound policy and legislative convenience dictate a liberal construction of the title and subject-matter of statutes to maintain their validity; infraction of this constitutional clause must be plain and obvious to be recognized as fatal. This has been the uniform rule of construction of this provision of our Constitution. It is only necessary that the title shall indicate the subject of it in a general way without entering into details. All auxiliary provisions properly attaching to the main subject and constituting with it one whole may be embraced within the enactment."

The Missouri Supreme Court, in the case of State ex. inf. Jesse W. Barrett, Attorney-General, vs. Robert Imhoff et al., 291 Mo. l. c. 619, quoting approvingly in part from State vs. Sloan, 258 Mo. l. c. 313, relative to the title of an act, says:

"* * * * It may, therefore, be sufficient to say that the purpose to be subserved by the Constitution in regard to the title of an act is that by its terms it must be such as to serve as a clear and comprehensive indicator of the purpose of the act. While it may be so general as to omit matters germane to the principal features of the statute, if it sufficiently indicates the substantial purpose of the law it will not be violative of the Constitution."

So in the case of State ex. rel. Garesche vs. Roach, 258 Mo. l. c. 559:

> "Where all the provisions of a statute fairly relate to the same subject, have a natural connection with it, are the incidents or means of accomplishing it, then the subject is single, and if it is sufficiently expressed in the title the statute is valid."

Again in Coca-Cola Bottling Company vs. Mosby, 289 Mo. l. c. 472, Judge Walker speaking for the Court said:

> "The State Constitution (Sec. 28, Art. 4) is read to little purpose if it be held to require that the title of an act must present the particularity of an itemized account or the minutiae of a chemical analysis. When the Constitution provides, therefore, that 'no bill..... shall contain more than one subject which shall be clearly expressed in its title,' it simply means that the title shall indicate in an unmistakable manner the general contents of the act; it does not require, nor was it intended that it should descend into particulars, but that it will be sufficient if it defines the nature of the statute and thus informs the reader as to its purpose. The nature of this constitutional provision being thus understood, the tendency of the Courts in numerous rulings has been to construe it liberally in aid of all well directed legislative power."

Appellants in this court and in the court below have attempted to convey the idea that the no par stock act is an amendment to the Missouri Franchise Act. This is not true and was so held by Judge Ragland in the Pierce Petroleum case, supra. The no par stock act is used merely for the purpose of arriving at the value of stock in a corporation having stock with no par value, the Tax Commission then turns to the regular franchise tax act of this state and assesses the franchise tax according to this act.

The title to the no par stock law is set out at page 31 of the record and reads as follows:

> "An act authorizing stock corporations, other than Building & Loan Associations, Trust companies and corporations authorized by law to transact the business of banking or insurance, to make provisions, upon formation, reorganization, merger, or consolidation, for the issue of either or both preferred or common shares without nominal or par value; regulating the same and such corporations; and prescribing the method of determining the number of shares and capital of corporations issuing shares in such manner."

The last three lines of this title are sufficient to cover Section 12, which is the section being attacked by appellant. When the title says, "regulating the same and such corporations; and prescribing the method of determining the number of shares and capital of corporations issuing shares in such manner," they have fully covered the section which provides for an arbitrary value of $100.00. The District Court held that the word "regulating" fully covered the provision of Section 12, and we contend the words "prescribing the method of determining the number of shares and capital of corporations" also cover that part of section 12 which provides an arbitrary value of $100.00 per share on all no par stock for assessing taxes.

III

THE METHOD OF COMPUTING THE FRANCHISE TAX IN MISSOURI DOES NOT DENY EQUAL PROTECTION OF THE LAW

This court has held many times, that the mere fact, a corporation is engaged in interstate commerce does not exempt its property from state taxation, but that the commerce itself, must not be burdened by state exaction, inter-

fering with the exclusive Federal authority over it. In Baltic Mining Company vs. Mass., 231 U. S. 68, l. c. 83, Justice Day speaking for the court said:

> "It is the commerce itself which must not be burdened by state exactions which interfere with the exclusive Federal authority over it. A resort to the receipts of property or capital employed, in part at least, in interstate commerce, when such receipts or capital are not taxed as such but are taken as a mere measure of a tax of lawful authority within the state, has been sustained (Citing cases)."

And in State of Maine vs. The Grand Trunk Railway Company of Canada, 142 U. S. l. c. 227-228, the railroad corporation contended that it should not pay an excise tax to the State of Maine, which tax was prorated against said railroad company in proportion to the number of miles of said company's tracks in the State of Maine, on the grounds that this tax was an interference with interstate commerce. Mr. Justice Field held:

> "• • "The privileges of exercising the franchises of a corporation within a State is generally one of value, and often of great value, and the subject of earnest contention. It is natural, therefore, that the corporation should be made to bear some proportion of the burdens of government. As the granting of the privilege rests entirely in the discretion of the State, whether the corporation be of domestic or foreign origin, it may be conferred upon such conditions, pecuniary or otherwise, as the State in its judgment may deem most conducive to its interests or policy . . . . . The character of the tax, or its validity, is not determined by the mode adopted in fixing its amount for any specific period or the times of its payment. The whole field of inquiry into the extent of revenue from sources at the com-

mand of the corporation, is open to the consideration of the State in determining what may be justly exacted for the privilege. . . . . ."

Continuing, the court said:

"The court below held that the imposition of the taxes was a regulation of commerce, interstate and foreign, and therefore in conflict with the exclusive power of Congress in that respect; and on that ground alone it ordered judgment for the defendant. This ruling was founded upon the assumption that a reference by the statute to the transportation receipts and to a certain percentage of the same in determining the amount of the excise tax, was in effect the imposition of the tax upon such receipts, and therefore an interference with interstate and foreign commerce. But a resort to those receipts was simply to ascertain the value of the business done by the corporation, and thus obtain a guide to a reasonable conclusion as to the amount of the excise tax which should be levied, and we are unable to perceive in that resort any interference with transportation, domestic or foreign, over the road of the railroad company, or any regulation of commerce which consists in such transportation."

In the case of Home Insurance Company of New York vs. People, the insurance company resisted payment of its franchise tax which had been levied upon its capital stock (said company having a portion of its capital stock in bonds of the United States), contending that it was entitled to a deduction for a sum bearing the same ratio thereto that the amount invested in bonds of the United States bears to its capital stock.

Speaking of the right of the state to grant the privilege of a franchise and impose such a tax, Justice Field, in his opinion, 134 U. S. l. c. 600, has this to say:

"• • • • •The granting of such right or privilege rests entirely in the discretion of the State, and, of course, when granted, may be accompanied with such condition as its Legislature may judge most befitting to its interests and policy. It may require, as a condition of the grant of the franchise, and also of its continued exercise, that the corporation pay a specific sum to the State each year, or month, or a specific portion of its gross receipts, or of the profits of its business, or a sum to be ascertained in any convenient mode which it may prescribe. The validity of the tax can in no way be dependent upon the mode which the State may deem fit to adopt in fixing the amount for any year which it will exact for the franchise. No constitutional objection lies in the way of a legislative body prescribing any mode of measurement to determine the amount it will charge for the privileges it bestows."

This court in the case of St. Louis-San Francisco Railway Company vs. Middelkamp, has passed on the franchise tax act of Missouri, and in its opinion in this case holds that the act does not interfere with interstate commerce. This was an injunction proceeding whereby the St. Louis-San Francisco Railway Company attempted to restrain the collection by the State Treasurer of Missouri of the state franchise tax against said railroad.

Justice Holmes, in writing the opinion of the court, 256 U. S. 231, said:

"There is no contravention of the commerce clause. It is said that the value of the franchise tax is derived partly from the fact that the corporation does interstate business, but that does not invalidate the tax . . . ."

Continuing, the Justice said:

> **"Nothing more needs to be said concerning the relation of the act to the Constitution of the United States. As to the Constitution of Missouri, we see no reason to believe that it has been violated, and perceive no indication of such an opinion in the judgments of the supreme court of the state. That court, on the contrary, seems to regard the act as valid."**

IV.

THE MISSOURI NO PAR LAW DOES NOT INTERFERE WITH INTERSTATE COMMERCE.

Simply because a tax is assessed upon and paid by a corporation engaged in interstate commerce does not make that tax necessarily an interference with interstate commerce. In the Postal Telegraph Cable Company vs. Adams, 155 U. S. 688, l. c. 695, Chief Justice Fuller speaking for this court said:

> "It is settled that where by way of duties laid on the transportation of the subjects of interstate commerce, or on the receipts derived therefrom, or on the occupation or business of carrying it on, a tax is levied by a state on interstate commerce, such taxation amounts to a regulation of such commerce and cannot be sustained. But property in a state belonging to a corporation, whether foreign or domestic, engaged in foreign or interstate commerce, may be taxed, or a tax imposed on the corporation on account of its property within a state, and may take the form of a tax for the privilege of exercising its franchises within the state, if the ascertainment of the amount is made dependent in fact on the value of its property situated within the state (the exaction therefore, not being susceptible of exceeding the sum which might be leviable directly thereon), and

if payment be not made a condition precedent to the right to carry on the business, but its enforcement left to the ordinary means devised for the collection of taxes. The corporation is thus made to bear its proper proportion of the burdens of the government under whose protection it conducts its operations, while interstate commerce is not in itself subjected to restraint or impediment."

The right of the state to place an arbitrary value upon stock for purposes of assessing the franchise tax, has already been decided by this court.

In the case of Roberts & Schaefer Company vs. Louis L. Emmerson, 271 U. S. 50 this point was definitely decided by the court. Justice Stone in concluding the opinion in this case l. c. 57 said:

"These differences, both in the legal incidents and in the practical uses of the two classes of stock not only are a basis for classification of them for purposes of taxation, but make unavoidable certain differences in the method of assessing this tax. Authorized capital stock cannot well be used as the measure of a tax unless some arbitrary value is assigned to the no par shares; for they may be issued from time to time at varying prices, and until issued, they cannot have any value. To require the stock to be issued at a value fixed in advance of its issue, and to make that value the basis of the tax, would in effect abolish no par stock. Because of the essential differences between the two kinds of stock, it is difficult to conceive of any other method of assessing the tax which would save the character of no par value stock and not result in similar inequalities.

"The inequalities complained of result from a classification which, being founded upon real differences, is not unreasonable, and the discrimination which results from it is not arbitrary or prohibited

by the 14th Amendment. It is enough that the classification is reasonably founded upon or related to some permissible policy of taxation. (Citing cases)"

Recently an Arkansas case came before the court. State ex rel. Attorney-General vs. Margay Oil Company, 169 Ark. 96, 273 U. S. 666. This was a case very similar to the case at bar, with the exception that the Arkansas law provided a par value of $25.00 and did not assess the tax on the surplus, but did assess a tax twice as high as Missouri on the outstanding capital stock which was in use in Arkansas. The opinion in this case is too lengthy to set out in the argument and because of the fact that the entire opinion bears upon the point in question we will not attempt to quote from parts of it. When the case was appealed to this court it was affirmed by a per curiam opinion on the authority of Roberts & Schaefer Company vs. Emmerson, supra.

The appellant in the court below laid much stress on the fact that a $100.00 tax on no par stock was unreasonable. We are unable to agree on this particular point. All par stock in the vast majority of Missouri corporations is issued at $100.00 per share. Why the appellant company, or any other company, desires to issue no par stock we do not know but the fact remains that a state should be permitted, and is permitted to place some value upon that stock for the purpose of arriving at a franchise tax or any other tax, involving capital stock and surplus. If this tax is unreasonable it seems to us the proper remedy lies in the Legislature of the State of Missouri and not in the courts. If it is unreasonable for foreign corporations doing business in the state of Missouri it is unreasonable for domestic corporations doing business in this state, and the charge is made equally against each of those classes of corporations.

When the present case was heard in the court below, International Shoe Company vs. Shartel, 29 Fed. (2nd) l. c. 607, Reeves, District Judge, had this to say:

"In the case at bar, both domestic and non-domestic corporations are subject to the same tax. The state bases its tax upon the property of the corporation having its situs in Missouri exactly as in the case of domestic companies. To all intents and purposes, therefore, it would bring the instant case squarely within the decision of Roberts & Schaefer Co. v. Emmerson, supra. Moreover, an almost parallel case was determined by the Supreme Court of the United States in the case of Margay Oil Corporation v. Applegate, Attorney General, 273 U. S. 666, 47 S. Ct. 458, 71 L. Ed. 830. In that case, as in this a Delaware Corporation doing business in Arkansas became subject to the Franchise Tax Law of that state. The complaint was made there, as here, to the effect that an arbitrary valuation was used as a basis for computing the tax. The Supreme Court of Arkansas in Margay Oil Corporation v. Applegate, Attorney General, 169 Ark. 96, 272 S. W. 845, sustained the tax, and its judgment was affirmed in 273 U. S. 666, 47 S. Ct. 458, 71 L. Ed. 830. The affirmance of said case by the Supreme Court was upon the authority of Roberts & Schaefer v. Emmerson, supra."

CONCLUSION

The principal point which respondents desire to urge upon this court, is that the facts in the case at bar, are not in any way similar to those presented in such cases as Airway Electrical Appliance Corporation vs. Day, Looney vs. Crane Company, and cases of this nature. In these cases the various states were attempting to tax corporations on authorized capital stock which was not outstanding. This court held in that line of cases, and rightly so, that such taxes were an interference with interstate commerce. In Missouri the state franchise tax has never been assessed on stock which was authorized but not outstanding, but solely on the OUTSTANDING capital stock and surplus. This fact alone distinguishes the present case from the long line of cases cited by appellant, both in the court below and in this court.

As to the right of a state to classify stock at a fixed arbitrary value, we rest respondents' case on the cases of Roberts & Schaefer vs. Emmerson, and State ex rel. Applegate vs. Margay Oil Company decided by this court and respectfully submit that the decision as handed down by the District Court should be affirmed.

Respectfully submitted,

STRATTON SHARTEL,
Attorney-General of Missouri,
LIEUTELLUS CUNNINGHAM,
Assistant Attorney-General,
SMITH B. ATWOOD,
Assistant Attorney-General,
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Special Assistant Attorney-General,
Solicitors for Respondents.

FILED
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CHARLES ELMORE C

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1928.

No. 779...

INTERNATIONAL SHOE COMPANY, a Corporation,
Complainant,
vs.
STRATTON SHARTEL, Attorney-General of the State of Missouri, and C. EUGENE STEPHENS, State Treasurer of the State of Missouri,
Defendants.

In Equity.

Appeal from the United States District Court, Western District of Missouri.

BRIEF AND ARGUMENT OF JOHN F. GREEN, OF THE ST. LOUIS BAR, AMICUS CURIAE.

St. Louis Law Printing Co., 415 North Eighth Street. CEntral 4477.

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1928.

No. .....

INTERNATIONAL SHOE COMPANY, a Corporation,
Complainant,

vs.

STRATTON SHARTEL, Attorney-General of the State of Missouri, and C. EUGENE STEPHENS, State Treasurer of the State of Missouri,
Defendants.

In Equity.

Appeal from the United States District Court, Western District of Missouri.

BRIEF AND ARGUMENT OF JOHN F. GREEN, OF THE ST. LOUIS BAR, AMICUS CURIAE.

With the consent of counsel for complainant and defendants, we respectfully ask permission of the Court to file herein a brief and argument, as amicus curiae, in behalf

of the following corporations, all of which have been duly authorized to do business in Missouri, and all of which have heretofore issued, under the authority of the respective states of their incorporation, stock of no nominal or par value, viz.:

Rice-Stix Dry Goods Company, St. Louis;
Elder Manufacturing Company, St. Louis;
The Best-Clymer Company, St. Louis;
National Department Stores, Inc., St. Louis;
The Alligator Company, St. Louis;
Stix, Baer & Fuller D. G. Company, St. Louis;
McQuay-Norris Mfg. Company, St. Louis;
Fuel Oil Company of St. Louis, St. Louis;
National Candy Company, St. Louis;
Johnson, Stephens & Shinkle Shoe Company, St. Louis;
Fulton Iron Works, St. Louis;
Pedigo-Weber Shoe Company, St. Louis;
National Bearing Metals Company, St. Louis;
General Grocer Company, St. Louis;
Tobin-Hamilton Leather Company, St. Louis;
Kirkpatrick Mortgage Company, St. Louis;
Wildwood Springs Club Investment Company, St. Louis;
Corneli Seed Company, St. Louis;
American Syrup & Sorghum Company, St. Louis;
Skouras Brothers Enterprises, Inc., St. Louis;
St. Louis Amusement Company, St. Louis;
Boyd-Welsh Shoe Company, St. Louis;
Automobile Discount Corporation, St. Louis;
St. Louis Terminal Warehouse Company, St. Louis;
Parke, Davis & Company;
Bird Grocery Stores, Inc., Kansas City;

White Eagle Oil & Refining Company, Kansas City;
Benzo-Gas Motor Fuel Company, Kansas City;
Cook Paint and Varnish Company, Kansas City;
The Gas Service Company, Kansas City;
Sheffield Steel Corporation, Kansas City;
Montgomery, Ward & Company, Kansas City;
Sears-Roebuck & Company, Kansas City;
Western Auto Supply Company, Kansas City.

Each of these corporations has tendered the amount of its franchise tax, if assessed on the basis of the actual value of its no-par stock, as measured by the value of all its assets that are located or used in the business transacted in Missouri, which amount the state officers have refused to accept.

STATEMENT.

This is an appeal from a decree of the District Court of the United States, Western District of Missouri, denying complainant an injunction against certain state officers. The application for an injunction was heard in the lower court by Judges Reeves and Otis of the District Court, and Judge Stone of the United States Circuit Court of Appeals of the Eighth Circuit. Complainant contends that Section 12 of the Stock Corporation Act of Missouri enacted by the State Legislature in 1921 and found in the present Session Acts of 1921, beginning on page 601, is unconstitutional and void. This act, consisting of fifteen sections, authorizes the organization of domestic corporations under the Laws of Missouri without nominal or par value and prescribes the conditions and regulations under which such no-par stock may be issued. This Stock Corporation Act of 1921 is set out in full in the brief filed on behalf of the International Shoe Company, to which we refer. The controversy here involves the validity of Section 12 of the said Stock Corporation Act of 1921, as construed by the Supreme Court of Missouri, under the Constitution of Missouri and also under the Constitution of the United States.

In so far as the Constitution of Missouri is concerned it is contended that said Section 12 of the Stock Corporation Act violates Section 28 of Article IV of the Missouri Con-

stitution in that the **title** of the Act does not indicate the purpose to enact a law such as Section 12 has been construed to be. It is also contended that said Section 12 of the Stock Act, as construed by the Supreme Court of Missouri and held to apply to foreign as well as domestic corporations, violates the "equal protection," the "due process," and "commerce" clauses of the United States Constitution.

HISTORY OF LITIGATION.

Construction of Section 12 by State Legislature.

The Stock Corporation Act of 1921 was approved April 12, 1921, and became the law ninety days thereafter on July 11, 1921. On August 4, 1921, the Legislature of Missouri met in special session to amend the corporation franchise tax laws of the state, and did repeal the old Corporation Franchise Tax Law and enact a new law in its place. But it did not incorporate in the new law the provisions of Section 12 of the Stock Corporation Act of 1921, but said amended franchise tax law of the state provides for the assessment of no-par stock stock on the basis of the value of the property used in the business transacted in the state, just as it had been assessed theretofore.

Construction by State Officers.

For the first six years after the enactment of the State Corporation Act of 1921 the state officers construed Sec-

tion 12 as having no application to **franchise taxes**, but continued to assess corporation franchise taxes upon the basis of the value of the property used in business conducted in the state, without regard to whether the stock was issued with or without par value. Then, in 1927, for the first time the state officers attempted to assess franchise taxes against all corporations having no-par stock upon the basis of an arbitrary value of $100.00 per share for all no-par stock. Thereupon the Pierce Petroleum Company, a foreign corporation with no-par stock, authorized to do business in Missouri, filed a suit to test the validity of such an assessment. The Supreme Court of Missouri then held in this test case that Section 12 of the Stock Corporation Act of 1921 had been properly construed by the state officers and justified an assessment of all no-par stock at an arbitrary valuation of $100.00 per share. In this test case no questions were presented to the Supreme Court of Missouri, and none were considered by it, relating to the constitutionality of said Section 12 of the Stock Corporation Act under the provisions of the Missouri Constitution or the Constitution of the United States, because learned counsel for the Petroleum Company in that case were so confident of their contentions as to the proper construction of Section 12 that they failed to present any argument as to its constitutionality.

BRIEF.

I.

The District Court, having jurisdiction on account of questions arising under the Constitution of the United States, this court, on appeal, should consider and pass upon all questions presented, whether they arise under the Federal Constitution or under the State Constitution.

Green v. Louisville Ry. Co., 244 U. S. 499, l. c. 508, 61 L. Ed. 1280, l. c. 1285;
Connecting Gas Co. v. Imes, 11 Fed. (2nd) 191;
Chicago Great Western Ry. Co. v. Kendall, 266 U. S. 94, l. c. 97, 69 L. Ed. 183;
Ohio Tax Cases, 232 U. S. 576, l. c. 586, 58 L. Ed. 737.

This proposition is so well established in federal law that it needs no further argument or citation of authorities to support it.

II.

Defective Title.

Under the decisions of the Supreme Court of Missouri, Section 12 of the Missouri Stock Corporation Act of 1921, as construed by the Supreme Court of Missouri in the case of State v. Pierce Petroleum Corporation, reported in Vol. 2 (2nd), Southwestern Reporter, page 790, is unconstitu-

tional and void because the title of the act does not comply with the provisions of Article IV, Section 28, of the Constitution of Missouri, relating to subjects and titles of legislative acts.

Southard v. Short, 8 S. W. Rep. (2nd Series) 903 (Mo. Sup. Court);
State v. Hackman, 292 Mo. 27;
State v. Imhoff, 291 Mo. 603;
State v. Ashbrook, 154 Mo. 375;
Woodward Hardware Co. v. Fisher, 269 Mo. 271, l. c. 278;
State v. Sloan, 258 Mo. 305;
State v. Rawlings, 232 Mo., l. c. 558;
State v. Fulks, 207 Mo. 26;
State v. Great Western Tea & Coffee Co., 171 Mo. 634;
State v. Crites, 277 Mo. 194;
State v. Sloan, 258 Mo., l. c. 313;
Cooley on Const. Limitations (7 Ed.), p. 205.

The title of this act is in the following language:

"An act authorizing stock corporations, other than building and loan associations, trust companies and corporations authorized by law to transact the business of banking or insurance, to make provision, upon formation, reorganization, merger or consolidation, for the issue of either or both preferred or common shares without nominal or par value; regulating the same and such corporations, and prescribing the method of determining the number of shares and capital of corporations issuing shares in such manner."

This title specifies only three things as included therein, namely: (1) The issuance by Missouri corporations of common and preferred stock without nominal or par value; (2) regulating the same and such corporations; and, (3) prescribing the method of determining the number of shares and capital of corporations issuing shares in such manner.

Clearly there is no suggestion in this title of an amendment to the **Corporation Franchise Tax Law** authorizing an unreasonable and arbitrary basis for, and a radical increase in the amount of franchise taxes assessed against corporations having no par stock.

(a)

The reference in the title of the act to the "**regulation**" of such corporations does not disclose an intent to levy a **franchise tax for revenue**. It may reasonably be held to indicate a **license tax** under the police powers of the state, but clearly does not disclose a purpose to levy a franchise tax, which is a tax for **revenue**; or to change the method of assessing **franchise taxes for revenue**. Section 12 of the act which attempts to do this is therefore invalid.

Pierce City v. Hentschell, 210 S. W. Rep. 31;
City of Carthage v. Rhodes, 101 Mo. 175;
State v. Ashbrook, 154 Mo. 375;
Ex parte Smith, 231 Mo. 111;
Cooley on Taxation, Sec. 125, p. 293;
Postal Telegraph Cable Co. v. Adams, 155 U. S. 688.

(b)

The question of the validity of Section 12 of the Stock Corporation Act of 1921, under this provision of the Constitution of Missouri, was not presented to the Supreme Court of Missouri in the Pierce Petroleum Corporation case and was not considered by that Court in its opinion.

See State v. Pierce Petroleum Corp., Vol. 2 (2nd), S. W. Rep. 790.

This opinion of the Supreme Court of Missouri shows clearly that this question was not considered by it, and it was not submitted in the briefs filed by counsel in that case.

(c)

Construction by State Officials.

Section 12 of the Stock Corporation Act of 1921 was **for six years** construed and understood by the state officers charged with the duty of its enforcement to apply merely to the **organization tax** imposed on domestic corporations having no par stock and not to be an amendment to the Corporation Franchise Tax Law. This fact alone shows that the **title** of the act does not comply with this provision of the Constitution by clearly stating its subject and purpose.

(d)

Construction by State Legislature.

The Stock Corporation Act of 1921, providing for the issue of no-par stock, was approved April 12, 1921, and became a law ninety days thereafter on July 11, 1921. Thereafter, on August 4, 1921, the State Legislature, in special session, revised the entire Corporation Franchise Tax Law of the state, but did not embody in this revised and amended franchise tax law any of the provisions of Section 12 of the Stock Corporation Act, then in full force, which, as construed by the Supreme Court, applies to franchise taxes to be assessed on no-par stock, as well as to organization taxes of such corporations, showing that the Legislature itself did not understand that said Section 12 of the Stock Corporation Act was intended to apply to franchise taxes.

IV.

The District Court, in its opinion denying an injunction against state officers, held that the word **"regulate,"** which is used in the title to the Stock Corporation Act of 1921, is broad enough to include a **franchise tax for revenue**, and indicates a purpose to levy that kind of a tax.

See 29 Fed. (2nd), l. c. 607.

With due deference to the learned Judges who concurred in that opinion we submit that the word "regulate"

in the connection in which it is used in the title to this act means merely an inspection fee or an organization or license fee paid when a corporation is licensed to do business in Missouri, and cannot be construed to mean or include a tax for **revenue purposes**, such as an annual franchise tax. The opinion of the lower court on this point is contrary to all legal authority.

It is elementary in law that governments may levy taxes:

1. Under the police power—the power to regulate.

2. Under the power to raise revenue.

It is equally elemental that the power to tax under the police power is based upon the governmental power to "**regulate**" relative rights, privileges and duties as between individuals and corporations, to conserve by "**regulations**," order in the political society, to encourage by "regulation" industry or to discourage by "**regulation**" any pernicious employments or practices.

The meaning of "regulate" and "tax under **police power**" are synonymous and cannot be extended to include an annual **tax for revenue**.

This is the uniform holding in the State of Missouri and is a well-settled principle in our jurisprudence.

City of Carthage v. Rhodes, 101 Mo. 175;
Ex parte Smith, 231 Mo. 111;
Pierce City v. Henschell, 210 S. W. 31;
State v. Ashbrook, 154 Mo. 375;
Cooley on Taxation, Sec. 125, p. 293;
Postal Telegraph Cable Co. v. Adams, 155 U. S. 688.

V.

Equally fallacious is the reasoning of the lower court in holding that Section 12 of the Stock Corporation Act, as construed by the Supreme Court of Missouri in the Pierce Petroleum Company case, supra, "**is not a statute providing for taxes. That it merely undertakes to provide a method of computing taxes upon corporations** issuing stock without nominal or par value."

See International Shoe Co. v. Shartel, 29 Fed. (2nd), l. c. 607.

Any law which has the effect of increasing the franchise tax levied upon a corporation from $26,000 to $104,000, as this law does in the case of the International Shoe Company, must necessarily be a statute providing for taxes and it is an idle play upon words to say that it merely provides a new "method of **computing** taxes upon corporations issuing stock without nominal or par value." It is the substance which determines the validity of a statute and not the shadow—it is the practical effect of the law and not the name by which it is called which determines its character.

Postal Telegraph Cable Co. v. Adams, 155 U. S. 688

If the reasoning of this opinion of the District Court on this point is sound, then the Legislature might enact a law

appropriating funds for state institutions out of the proceeds of state income taxes and embody in it a provision to the effect that thereafter state income taxes should be computed and assessed at the rate of 1½ per cent, instead of 1 per cent, without any reference in the title to such provision for increase of income taxes, because it would merely provide a different **method of computing the tax**. We submit that such reasoning is fallacious.

VI.

All questions in the case arising under the Federal Constitution are ably presented in the briefs filed herein by counsel for the International Shoe Company and we adopt their brief upon those questions.

ARGUMENT.

I.

Defective Title.

Section 28 of Article IV of the Constitution of Missouri provides:

> "No bill * * * shall contain more than one subject, which shall be clearly expressed in its title."

The Supreme Court of Missouri, in the case of Vice v. City of Kirksville, 280 Mo. 348, construing this section of the Constitution, said:

> "It is evident that the framers of the Constitution in the enactment of section 28, supra, were attempting to guard the people of our state against fraudulent, misleading and improper legislation by providing that the title to the act should indicate in some way the kind of legislation that was to be had thereunder."

In the case of Woodward Hardware Co. v. Fisher, 269 Mo. 271, the Court said:

> "It is manifest that the framers of our Constitution inserted in the organic law the above provision in order that the members of the General Assembly, when reading the title to an act, shall be advised, at least in a general way, of the subject sought to be covered in the body of same."

In the case of State v. Sloan, 258 Mo. 305, the Court said:

> "The purpose of a title is to serve as a clear and comprehensive indicator of the purport of the act. While it may be so general in its terms as to omit reference to or expression of the matters germane to the principal features of the statute, if it sufficiently indicates the substantial purpose of the law, it will not be violative of the Constitution; but where a title descends to particulars and specifies a certain class included within the provisions of the act, to the exclusion of others, it does not sufficiently indicate the purport of the law, and is to that extent violative of the constitutional provision."

The title of the Stock Corporation Act of 1921 reads as follows:

> "An act authorizing stock corporations, other than building and loan associations, trust companies and corporations authorized by law to transact the business of banking or insurance, to make provisions, upon formation, reorganization, merger, or consolidation, for the issue of either or both preferred or common shares without nominal or par value; regulating the same and such corporations; and prescribing the method of determining the number of shares and capital of corporations issuing shares in such manner."

It is manifest that this title is not **general** in its terms and language, but that it goes into specific details and

attempts to state with particularity exactly what the bill is intended to cover and include.

(1)

It authorizes corporations to provide for the issue of both common and preferred stock without nominal or par value. This paragraph could, in the nature of the case, apply only to domestic corporations.

(2)

It specifies enactment of laws **regulating** the same (no-par stock issues) and **such corporations** (domestic corporations) issuing no-par stock.

(3)

And it also specifies the method of determining the **number of shares and the capital** of corporations issuing shares in such manner (no-par shares).

It is clear that the **title** of this act refers only to **domestic** corporations, because the Legislature of Missouri had no power to **authorize** the issue of no-par stock by a foreign corporation, or to **regulate** such issue by a foreign corporation, or to **determine the number of shares or the capital** of foreign corporations issuing such no-par stock.

Certain it is that there is nothing in the **title** that indicates an intention to amend or change the then existing **franchise tax law** of Missouri covering both foreign and domestic corporations. The word "**regulate**" might be

held to indicate a **license** tax under the police powers of the state, but it does not suggest to the mind a **franchise tax for revenue**, covering both domestic and foreign corporations. The word "regulate" in such connection has a well-defined meaning in the law of Missouri and in general law and has never been held to cover or include a tax for **revenue purposes.**

State v. Ashbrook, 154 Mo. 375;
City of Carthage v. Rhodes, 101 Mo. 175;
Pierce City v. Heutschell, 210 S. W. Rep. 31;
Ex parte Smith, 231 Mo. 111;
Cooley on Taxation, Sec. 125, p. 293;
Postal Telegraph Cable Co. v. Adams, 155 U. S. 688.

Cooley on Taxation, Sec. 125, p. 293, says:

> "Delegation of power to tax confers no authority to license for the purpose of regulation, and, conversely, delegation of the power to license or regulate confers no authority to tax for the purpose of revenue."

The Missouri cases cited above all recognize the clear distinction between authority to **regulate** and authority to levy a **tax for revenue.**

(a)

The opinion of the District Court in holding that the word "**regulate,**" found in the title, indicates an intention to levy an **annual franchise tax for revenue** is opposed to all the decisions of the Supreme Court of Missouri on this

subject and is not supported by general law, which makes a clear distinction between a license or regulatory tax under the police power, and a franchise tax for revenue.

See cases, supra, in brief.

(b)

The further statement in the opinion of the District Court that Section 12 of the Stock Corporation Act, as construed by the Supreme Court in the Pierce Petroleum Corporation case, does not provide for any franchise tax on no-par stock, and does not amend the law relating to assessment of franchise taxes on no-par stock, but merely provides a different **method for computing the tax**, is, we submit, a manifest fallacy, because it is the practical effect of the law, and not its language alone, which determines its character. The practical effect of this amendment was to increase the franchise tax of the International Shoe Company from approximately $26,000 to $104,000.

Cases under point IV of brief.

Construction by State Officers.

Most convincing and conclusive evidence that the **title** to this Stock Corporation Act does not clearly indicate that it authorized the arbitrary valuation of the no-par stock issued by corporations doing business in Missouri at $100.00 per share, for the purpose of assessing franchise

taxes, is the fact the members of the State Tax Commission, the Attorney-General, and other state officers, charged with the duty of construing and enforcing the law and assessing franchise taxes thereunder, did not discover that this act was intended to apply to foreign corporations having no-par stock for six or seven years after its enactment, but continued for that length of time to assess such franchise taxes on the basis of the actual value of such no-par stock. If the **title** of this act is as clear as the State Constitution requires it to be, then why was it not followed and enforced the first six years after its enactment into law? The fact that it required six long years for these lynx-eyed public officials, who were all the time diligently searching for additional state revenue, to discover that the Legislature, by said section 12, intended to arbitrarily value no-par stock at $100.00 per share for **franchise taxes**, conclusively shows that this intention was not clearly enough expressed in the title to satisfy constitutional requirements.

How could the members of the State Legislature or the officers of the corporations affected have discovered that this was the true meaning and intent of said act from the **wording of its title** in time to oppose its enactment into law if it required six years' study for the expert state tax officials to discover that such was its meaning?

Strict Construction of This Constitutional Provision by the Missouri Supreme Court.

In the case of **State v. Imhoff, 291 Mo. 603**, the Court construed an act relating to balloting for constitutional amendments having the following title:

> "An Act to repeal Sections 5970 and 5971 of Article VII of Chapter 43, Revised Statutes 1909, relating to constitutional amendments, providing for official titles to all proposed constitutional amendments and the manner and form of printing same upon the official constitutional ballots."

The body of this act provided for the submission of other propositions on the constitutional ballot and the Court held this provision invalid because the **title** of the act did not refer to any subject except that of amendments to the Constitution.

In **State v. Hackman, 292 Mo. 27**, the title of the act construed specified that it was an act **relating to the** issue of bonds by municipal corporations, which might bear interest at a rate not exceeding 6 per cent per annum and might be sold at not less than ninety-five per cent of the par value thereof.

In the body of the act was a requirement that the notice of any election held to authorize the issue of such bonds should specify the **rate of interest thereon.** This provision

was held to be void because not covered or included in the title.

In **Berry v. Majestic Milling Co., 284 Mo. 182**, the **title** of the act considered by the Court provided for the **regulation** of the employment of children between 14 and 16 years of age. One section of the act **prohibited** the employment of children of that age in certain industries. This section the Court held to be invalid because the title did not indicate that this was the purpose of the act.

In **Vice v. City of Kirksville**, 280 Mo. 348, the title of the act under consideration specified that it was an act to authorize municipal corporations to erect and maintain water works, etc. In the body of the act was a provision exempting such municipal corporations from liability for negligence in the operation of such utilities. This provision was held invalid because the **title** of the act did not indicate that there was any such provision in it.

In **State v. Crites, 277 Mo. 194**, the construed act related to regulating legislative agents, etc., and the Court said:

> "If the title had merely referred to 'regulating legislative counsel and legislative agents' generally it would have been all right, but when the title went on to specify certain restrictions and omitted mention of certain other restrictions, it thereby failed clearly to express the subject.
>
> "In the law under consideration the title to the act indicates that certain acts shall be required and certain acts prohibited. That part of the act with which

we are concerned prohibits totally different acts and acts which the title indicates are perfectly lawful." (This case reviews earlier cases on the point.)

In **Woodward Hardware Co. v. Fisher, 269 Mo. 271,** the Court construed an act, the title of which referred merely to the annual registration and reports of corporations. In the body of the act was a provision undertaking to make the officers and directors individually liable as partners for the debts of the corporation in case it did not comply with the law. The Court held this provision void because not specified in the title.

In **State v. Sloan, 258 Mo. 305,** the Court considered an act having the following title:

> "An act to amend Sec. 794 of Article VI of Chapter 6 of the Rev. Stat. of Mo. 1909, entitled, 'Herding by Nonresidents,' by adding certain amendments thereto."

The body of the act contained provisions for herding by **residents** as well as **nonresidents**, and the Court held it void because the title contained no reference to residents.

The title of the Stock Corporation Act of 1921 contains no reference whatsoever to **foreign** corporations. Why, then, does it not come under the condemnation of the opinion of the Supreme Court in the case of State v. Sloan, supra?

In **State v. Hurley, 258 Mo. 275**, the title of the act construed was as follows:

> "An Act to amend Chapter 67 of the Revised Statutes of Missouri * * * relating to fish, by adding an article thereto to be known as Article III and to be entitled 'The Protection and Preservation of Fish,' and to provide penalties for the violation thereof."

Certain sections of the act then provided penalties for having and selling dynamite, powder, etc., without having a permit and for failure to file an affidavit as to the use of such dynamite and powder.

A delivery man of a powder company was arrested and convicted.

The Supreme Court, in construing this act, said that the requirements of a permit and affidavit from persons or companies handling explosives generally are incongruous and not fairly within the purview of the title.

The latest decision of the said court on this subject is that of **Southard v. Short, Vol. 8 (2nd Series), S. W. Rep., p. 903.**

The Court considered in this case the validity of the Act of 1921 relating to illegitimate children. The title to this act specified merely that it related to "descents and distributions," but the body of the act contained a section providing that the mother of a child born out of wedlock might institute a suit to establish the paternity of such child, etc. It was held that this provision was void be-

cause the title of the act did not refer to such an action or suit.

This list of decisions of the Supreme Court of Missouri on this subject might be multiplied indefinitely. They are sufficient, we believe, to clearly establish that the title of the Stock Corporation Act of 1921 does not contain any sufficient reference to an amendment of the corporation franchise tax law of the state and, therefore, section 12 of said act, as construed in the Pierce case, supra, is unconstitutional and void under the State Constitution.

We do not ask or expect this Court to go beyond these decisions of the Supreme Court of Missouri in passing on the sufficiency of the title of the Stock Corporation Act of 1921. But, if this Court will only apply to the consideration of this title the same rules and principles the Supreme Court of Missouri has applied in similar cases, we are confident the tax provisions of said act must be held void.

II.

This Point Not Decided by Supreme Court of Missouri.

If this question of defective title had been presented to the State Supreme Court in the case of State v. Pierce Petroleum Corporation, Vol. 2 (2nd) S. W. Rep. 790, and decided by that Court adversely to our contentions here, then no doubt this Court would be inclined to follow such ruling. But this particular was not presented by briefs

of counsel in that case and was not mentioned or considered by the Supreme Court in its opinion. Learned counsel who represented the Pierce Petroleum Corporation in that case were so confident of gaining a decision on other points that this point was not presented to the Court.

III.

Other questions in this case, arising under the Federal Constitution, have been so fully and ably presented by counsel for the International Shoe Company in the briefs filed herein that we adopt their arguments in presenting those questions without attempting to repeat them.

Respectfully submitted,

JOHN F. GREEN,
Amicus Curiae.